

EXHIBIT 2

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

-----X
JACK REESE, et al., :
Plaintiffs, : Case No.
vs. : 2:04-cv-70592-PJD-PJK
CNH GLOBAL N.V. and CNH :
AMERICA LLC, :
Defendant. :
-----X

Deposition of MARK L. LYNNE

Baltimore, Maryland

Friday, January 17, 2014

9:39 a.m.

Job No. 1-243549

Pages: 1 - 197

Reported by: Dana C. Ryan, RPR, CRR

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1 A It's about a -- it's been a number of
2 years. I don't recall.

3 Q Mr. Lynne, you were engaged to opine on
4 how CNH's proposed plan would affect plaintiffs;
5 correct?

6 A Yes.

7 Q How did you come to be engaged in this
8 project?

9 A I was contacted by Roger McClow.

10 Q Did Mr. McClow ask you any specific
11 questions in which he wanted opinions?

12 MS. BRAULT: I'm going to place an
13 objection. I think you're going into
14 communications that are outside the scope of Rule
15 26.

16 BY MR. ROGACZEWSKI:

17 Q Let me try and ask it a different way.
18 How did Mr. McClow describe the scope of the
19 engagement?

20 MS. BRAULT: Well, again, I think that
21 you're going into communications. I think that
22 his report indicates what the engagement was.

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1 BY MR. ROGACZEWSKI:

2 Q I'll take the answer.

3 A I was asked to review the proposed
4 changes and their impact.

5 Q Did Mr. McClow define for you what
6 "impact" meant?

7 A Well, what the -- what the changes
8 would mean in terms of out-of-pocket costs for the
9 retirees.

10 Q What facts, if any, did Mr. McClow
11 provide you with?

12 A He -- well, he provided me with a
13 number of documents for the -- the current and
14 proposed plan.

15 Q Were there any documents that you asked
16 him for?

17 A I -- I believe the documents that he
18 provided seemed -- seemed comprehensive in terms
19 of allowing me to -- to do the analysis I wanted
20 to do.

21 Q Over the course of the engagement, have
22 you requested specific information from -- from

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1 plaintiffs' counsel?

2 A I -- I did ask for some additional
3 information about some of the cases that Mr. Macey
4 had discussed.

5 Q And what did you ask for about those
6 cases?

7 A Information that would -- would give me
8 more insight into what happened with -- with those
9 cases, communications about benefits or court
10 cases.

11 Q Did you conduct any independent
12 research in connection with those cases?

13 A I believe I did go on the -- the UAW
14 VEBA Web site.

15 Q Is it fair to say, then, besides going
16 on the UAW VEBA Web site, what you know about
17 those cases comes to you from plaintiffs' counsel?

18 A Yes.

19 Q What did -- what have -- throughout the
20 course of the engagement, what have plaintiffs'
21 counsel told you about the rulings of the Sixth
22 Circuit in this case?

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1 BY MR. ROGACZEWSKI:

2 Q Mr. Lynne, you mentioned earlier that
3 you considered the pensions that class members
4 received; is that correct?

5 A Yes.

6 Q And that's the only form of income that
7 you considered in evaluating the participant's
8 ability to pay for health care; correct?

9 A It is.

10 Q You didn't consider social security or
11 disability income; correct?

12 A I didn't have that information, but I
13 did not consider it.

14 Q You didn't consider if they had income
15 from other employment; correct?

16 A No.

17 Q You didn't consider any other assets
18 they might have?

19 A No.

20 Q You didn't consider if they had other
21 spending that could be shifted to cover health
22 care benefits; correct?

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1 A Correct.

2 (Lynne Deposition Exhibit 10 was marked
3 for identification and attached to the
4 transcript.)

5 BY MR. ROGACZEWSKI:

6 Q Mr. Lynne, you have in front of you
7 what's been marked as Exhibit 10. It has the case
8 name at the top. It doesn't have a title. It's
9 a -- it appears to be a spreadsheet. It was
10 produced by you at 921.

11 Do you recognize this document?

12 A Yes.

13 Q And what is this document?

14 A It is the end product of analysis that
15 I had my associate Bill Hudec do to sort through
16 the pension data file we got and put -- put the
17 pensioners in different categories and see how
18 many there were and -- and -- excuse me -- and
19 what the -- what the median was -- median pension.

20 Q And I think you said earlier that you
21 received a file from plaintiffs' counsel that had
22 pension data on it. Am I remembering that

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1 correctly?

2 A Yes.

3 Q Is that the data that Mr. Hudec used --

4 A Yes.

5 Q -- to create Exhibit 10?

6 A Yes.

7 Q You see in the upper left-hand corner
8 it says, Redacted, and there's a dark strip. Do
9 you see that?

10 A Uh-huh.

11 Q Do you -- do you know what is behind
12 the redaction?

13 A No.

14 Q Did you redact something from this
15 document?

16 A I don't recall doing that.

17 Q Do you remember what would be there if
18 it wasn't redacted?

19 A No, I -- but it was -- it was a
20 heading -- I mean, it would have been a heading
21 that had the -- the group split out without
22 reference to whether they were disabled. And --

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1 and the bottom is -- is all -- it's all the same
2 group of people but splitting out the disabled
3 population separately, whereas, here they're just
4 in each of those categories as they would fall,
5 you know, age.

6 Q So it's your understanding that a
7 heading similar to the one halfway down, quote,
8 Additional Split for Disabled Retirees, open
9 paren, 5/24/2013, close paren, is behind the
10 redaction?

11 A To the best of my recollection, yes.

12 Q When you produced documents in response
13 to CNH's subpoena, what was the logistical process
14 that you went through to produce them?

15 A I'm not sure what you mean.

16 Q Okay. How did the documents get from
17 you to me?

18 A They went through counsel.

19 Q Okay. Did you instruct counsel to
20 redact anything from the documents that you were
21 providing for production?

22 A No. Again, not that I recall.

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1 (After recess -- 12:10 p.m.)

2 (Lynne Deposition Exhibit 11 was marked
3 for identification and attached to the
4 transcript.)

5 BY MR. ROGACZEWSKI:

6 Q So, Mr. Lynne, up on the screen is
7 what's marked as Deposition Exhibit 11. It is a
8 Microsoft Excel workbook titled IPO -- Pension
9 Data -- 130812 - on CNH_slist.xlsx.

10 And I'll represent that it was produced
11 by you in response to the subpoena.

12 MR. ROGACZEWSKI: And I'll also state
13 on the record that the only thing I have done to
14 this file is I have extracted it from the disk on
15 which it was provided, loaded it onto my laptop,
16 and I have added to the document title Lynne
17 Deposition Exhibit 11.

18 And I also have thumb drives on which I
19 will provide the exhibit to the court reporter and
20 to Ms. Brault.

21 BY MR. ROGACZEWSKI:

22 Q And using a digital exhibit often

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1 requires a lot more cooperation between the --
2 between the witness and the questioner, as well as
3 opposing counsel. So if you want me to navigate
4 any place in particular, direct me to do so, and I
5 will do so. If you want me to zoom it in, I'm
6 happy to zoom it in. I did want to at least open
7 it up, though, as -- as it opened as we received
8 it.

9 Looking at Exhibit 11, Mr. Lynne, do
10 you recognize this document?

11 A Yes.

12 Q And what is this document?

13 A It's an Excel file of pensioners with
14 their pension -- CNH pensioners with their pension
15 amounts.

16 Q And how did you acquire this document?

17 A I received it from counsel.

18 Q You didn't create this document;
19 correct?

20 A No.

21 Q And, in fact, if you go over to the
22 file tab. In the properties you see that Roger

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1 McClow authored it; correct?

2 A I received it from Roger.

3 Q How many times have you met Mr. McClow?

4 A Well, we -- he is one of the trustees
5 on Middletown Works VEBA, so I'm not sure how many
6 times that makes, but we have quarterly meetings
7 for the last four or five years.

8 Q Is that how you met Mr. McClow?

9 A Yes.

10 Q Going over to column N, which has a
11 heading that's in cell N1 that says, Bates Number,
12 do you see that?

13 A Yes.

14 Q In that column there are a series of
15 numbers that begin with the prefix CNHA.

16 Do you see that?

17 A Yes.

18 Q Do you know what those numbers
19 represent?

20 A No.

21 Q Did you do anything to audit the data
22 in this spreadsheet?

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1 A No.

2 Q Did you ask any questions about the
3 spreadsheet?

4 A Well, we just -- we wanted to make sure
5 we understood what the -- what the amount --
6 amounts were and when the pension amount changed.
7 You can see that, you know, there's a -- an amount
8 to age 62, and then the basic pension we wanted to
9 make sure we understood that -- that the pension
10 age 62 is what they -- they got when they were
11 first retired if they were under 62 and got that
12 to age 62 and then the basic pension after -- at
13 age 60 -- starting at age 62.

14 Q So just so the record is clear, you're
15 referring to column L of the worksheet, which
16 is -- has a heading of Pension To Age 62 in cell
17 L1, that you understand -- you understood that to
18 be the pension that a class member would receive
19 from retirement until age 62; is that my -- am I
20 summarizing what you just said correctly?

21 A Yeah. Can you -- can you go to
22 further -- are there further columns on the right?

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1 Q Yes. (Indicating).

2 A Okay.

3 Q Any particular column?

4 A No.

5 Q Okay. And then in the amount -- in the
6 column that's headed K with the title in K1 of
7 Basic Pension, you understood that to be the
8 pension that a class member would receive when --
9 after they turn what age?

10 A Sixty-two.

11 Q Okay. And did you ask any other
12 questions about Exhibit 11?

13 A I don't recall asking the other
14 question.

15 Q But then you -- you used the data in
16 Exhibit 11 to perform your analysis in coming to
17 your opinions; correct?

18 A To compare costs with pension.

19 (Lynne Deposition Exhibit 12 was marked
20 for identification and attached to the
21 transcript.)

22 BY MR. ROGACZEWSKI:

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1 Q So you have in front of you, Mr. Lynne,
2 what's been marked as Exhibit 12. It's a document
3 entitled Plaintiff Reese's Responses To CNH's
4 Second Set Of Interrogatories To Plaintiffs.

5 Have you seen this document before?

6 A I -- I honestly I may have, but it's
7 not coming back to me.

8 Q Have you met Mr. Reese?

9 A No.

10 Q Do you understand he's the lead
11 plaintiff in this case?

12 A Yes.

13 Q Okay. So I'm going to navigate the
14 workbook to find Mr. Reese who is in row 836 on
15 Exhibit 11.

16 Now, Mr. Reese is over age 65; correct?

17 A Is F date of birth?

18 Q Yes, the data in cell F, 836, appears
19 to be Mr. Reese' date of birth.

20 A 4/3/1948?

21 Q Correct.

22 A Okay. So he turned 65 last April.

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1 Q And according to Exhibit 11 -- and I'm
2 going over to cell K, 36, you assumed he had a
3 pension of about \$14,775; correct?

4 A You're going to make me do this again.

5 It would be about 14,800.

6 Q Now, I'll ask you to look at page 3 of
7 Exhibit 12. In Mr. Reese's response to
8 interrogatory 14, it asks about his -- his income.
9 And according to Mr. Reese, his pension in 2012 is
10 about \$2,000 greater than what you estimated;
11 correct?

12 A Greater than what we were provided,
13 yes.

14 Q I understand. Greater than the amount
15 that you would have considered his pension to be;
16 correct?

17 A Yes.

18 Q And he also has an additional pension
19 of over \$25,000?

20 MS. BRAULT: I'm just going to place an
21 objection to the extent that you're having him
22 refer to the answers to interrogatories, which he

1 said he did not see, and asking him to make
2 comparisons now. I think that that's
3 argumentative.

4 THE WITNESS: I see that it says that,
5 yes.

6 BY MR. ROGACZEWSKI:

7 Q You would agree that Mr. Reese also has
8 as of, at least, 2012, over \$30,000 of SSDI;
9 correct?

10 A According to this, yes.

11 Q And annuity income of over \$15,000;
12 correct?

13 A That's what it says here.

14 Q Do you have any reason to doubt
15 Mr. Reese's answers to the interrogatory?

16 A No.

17 MS. BRAULT: I just want to place an
18 objection. I think you said SSDI, and the
19 question was for social security or disability
20 income, just to be clear. I don't think that
21 Mr. Reese was disabled.

22 MR. ROGACZEWSKI: I was not

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1 suggesting -- I apologize --

2 MS. BRAULT: No, no, just wanted to
3 make sure we were clear.

4 MR. ROGACZEWSKI: I didn't mean to
5 suggest that.

6 BY MR. ROGACZEWSKI:

7 Q Each of these additional sources of
8 income would factor into Mr. Reese's ability to
9 pay for health care, wouldn't they?

10 A They would along with all other
11 expenses.

12 Q Sure. But you didn't consider any of
13 these other sources of income; correct?

14 A I did not because I didn't have them.

15 Q If you had them, would you have used
16 them?

17 A We were -- we were just trying to
18 compare over time what would happen with expenses
19 of the benefit they got from CNH with the pension
20 they got from CNH. I thought that was a
21 reasonable comparison to look at the impact over
22 time of -- of the potential change. I mean, I --

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1 people are going to have, you know, different
2 other situations in their lives, but this is what
3 we had to compare.

4 Q But you would not disagree, though,
5 that these other sources of income can provide
6 Mr. Reese with a greater ability to pay for health
7 care than his pension from CNH?

8 MS. BRAULT: Objection: argumentative.

9 THE WITNESS: Well, the additional
10 income would certainly be there to pay for the
11 expenses, but I would have no idea whether he was
12 a special case or -- no pun intended -- or
13 whether, you know, all the other folks would have
14 these other sources of income.

15 BY MR. ROGACZEWSKI:

16 Q You're not saying it's irrelevant,
17 though?

18 A For one person that income would factor
19 into affording anything, yes.

20 Q Do you understand this to be a class
21 action, Mr. Lynne?

22 A Yes.

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1 A Yes.

2 Q Isn't that what someone in your field
3 does, compare benefit plans across industries?

4 A Yes.

5 Q So why is it difficult?

6 A Because there are different situations
7 with different employers, things might be
8 bargaining, not bargaining. There are other --
9 other than just looking at the benefit plans, in
10 some of these instances there were -- there were
11 other things agreed to outside of the health
12 benefit plans that were part of -- as I understood
13 it, part of the negotiations or a settlement.

14 So, I mean, you have to look at many
15 different things other than just comparing benefit
16 plans.

17 Q Are you -- are you a member of the
18 American Academy of Actuaries?

19 A No.

20 Q Okay. Do you -- do you subscribe to
21 the academy's methodologies?

22 A Generally.

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1 (Lynne Deposition Exhibit 17 was marked
2 for identification and attached to the
3 transcript.)

4 BY MR. ROGACZEWSKI:

5 Q You have in front of you what's been
6 marked as Exhibit 17 which is a 1988 methodology
7 for valuation of accident and health plans under
8 Section 89 of the Internal Revenue Code. You
9 produced it at numbers 861 through 899.

10 A Are you familiar with this document?

11 Q Yes.

12 Q In fact, I think you used this document
13 or its methodology to calculate the relative value
14 of the 1990 plan; correct?

15 A This was used as part of that, yes.

16 Q All right. On page 1 it says that,
17 quote, The value for a specific plan is based
18 entirely on its provisions, unquote.

19 Q Do you agree with that?

20 MS. BRAULT: That that's how the -- a
21 valuation is done under this protocol?

22 BY MR. ROGACZEWSKI:

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1 Q That's a statement in the methodology:

2 The value for a specific plan is based entirely on
3 its provisions.

4 Is that -- do you agree with that?

5 MS. BRAULT: I'm trying to understand
6 your question. Are you asking if in a normative
7 way a valuation is supposed to include that, or
8 are you just saying that that's what it says in
9 this document?

10 MR. ROGACZEWSKI: I think my question
11 was sufficiently clear.

12 BY MR. ROGACZEWSKI:

13 Q I'll take the answer.

14 A I mean, when we are simply looking at
15 Health Plan A versus Health Plan B, then, you
16 know -- and -- and in just determining not the
17 cost of the plan based on usage or anything else
18 but just on the benefits provided in one plan
19 versus another, that's what this is used for.

20 Q And then it goes on, The value is
21 independent of the geographic location and
22 demographic characteristics of employees.

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1 Do you agree with that?

2 MS. BRAULT: I -- I'm -- I'm sorry. I
3 have to object to form. I really don't understand
4 your question. Are you asking if this methodology
5 is -- is stating that as the boundaries of the
6 methodology, or are you asking him if all
7 valuations --

8 BY MR. ROGACZEWSKI:

9 Q I'll take the answer.

10 MS. BRAULT: I don't understand the
11 question.

12 BY MR. ROGACZEWSKI:

13 Q I'll take the answer.

14 MS. BRAULT: I would like to understand
15 the question, please.

16 BY MR. ROGACZEWSKI:

17 Q I'll take the answer.

18 MS. BRAULT: Do you understand the
19 question?

20 THE WITNESS: I'm kind of confused by
21 the question.

22 BY MR. ROGACZEWSKI:

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1 Q There's a statement, The value of a
2 plan is independent of the geographic location and
3 demographic characteristics of employees, the
4 actual health care utilization by plan
5 participants and the type of plan under which the
6 benefits are provided.

7 Do you agree with that statement?

8 MS. BRAULT: That that's what it says
9 here?

10 BY MR. ROGACZEWSKI:

11 Q Do you agree with that statement?

12 A If you're just comparing one plan to
13 another and that's all you're looking at, yes.

14 Q And isn't that what we're doing in this
15 case?

16 A Well, we're -- in the context of
17 comparing what CNH is proposing to -- to put in
18 for -- for this plaintiff class versus what it has
19 already done for others, there are other things --
20 there are other benefits outside of the plan that
21 were provided.

22 If you're going to compare those two

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1 things, I think you can't ignore that there were
2 pension improvements, improvements to Medicare
3 Part B reimbursement. There was a -- a savings
4 account that was set up. I mean, all of those
5 things -- what -- what I'm saying is there might
6 be other things besides one plan versus another.

7 Q Does the valuation methodology in
8 Exhibit 17 take those things into account?

9 A I -- when I use this, I looked at the
10 plan design.

11 Q The terms of the health care plan?

12 A Just comparing the -- the '90 and the
13 '98, in that narrow focus, I used this comparing
14 the plan provisions.

15 Q And you could do the same comparison
16 between the current plan and the proposed plan;
17 correct?

18 A I could.

19 Q And the valuation would be the same,
20 wouldn't it?

21 A The same as what?

22 Q Between the current and the proposed

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1 plan.

2 A It would be a different value.

3 Q How? I'm sorry. The proposed plan and
4 the 2005 plan, you could compare those two plans,
5 couldn't you?

6 A Yes.

7 Q And the valuation would be the same,
8 wouldn't it?

9 A For the -- the -- for the medical plan
10 or the drug plan, yes.

11 Q Which is what Exhibit 17 is all about,
12 the plan value; correct?

13 MS. BRAULT: I'm going to place an
14 objection.

15 THE WITNESS: It's part of -- it's part
16 of looking at it. It's not the whole thing.
17 There are other benefits besides what this values.
18 This is just valuing the medical or the
19 prescription benefits.

20 BY MR. ROGACZEWSKI:

21 Q And when the court -- if the court is
22 asking us to compare the -- whether or not the

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1 medical benefits are roughly consistent or
2 reasonably commensurate --

3 A With --

4 Q -- why isn't --

5 MS. BRAULT: Wait.

6 THE WITNESS: With --

7 BY MR. ROGACZEWSKI:

8 Q -- why isn't --

9 MS. BRAULT: Wait.

10 BY MR. ROGACZEWSKI:

11 Q -- this sufficient?

12 MS. BRAULT: I'm going to place an
13 objection. It's argumentative, and it's certainly
14 not what the court asked us to look at, and I
15 object.

16 BY MR. ROGACZEWSKI:

17 Q I'll take the answer.

18 MS. BRAULT: Form and foundation.

19 BY MR. ROGACZEWSKI:

20 Q I'll take the answer.

21 A As I understand it, the court is
22 looking at the comparison between the plan that

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1 this class of retirees has now, which is not the
2 2005 plan, comparing that to the proposed plan.

3 Those are very different plans, so I'm --

4 Q You don't --

5 A -- confused about what you're asking.

6 Q You don't understand that one of the
7 factors is whether or not the proposed plan is
8 roughly consistent to what's provided to CNH's
9 current employees?

10 A Is -- would the class of plaintiffs
11 here get everything that was provided to those
12 people? No.

13 So it's not consistent. They were
14 given other things that were part of a
15 negotiation, as I understand it.

16 Q That are not health benefits?

17 A Right.

18 MS. BRAULT: Well --

19 BY MR. ROGACZEWSKI:

20 Q Okay. Let's talk about AT&T --

21 MS. BRAULT: I'm going to place an
22 objection to the last question to the extent it's

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1 overly broad and undefined.

2 BY MR. ROGACZEWSKI:

3 Q How did you acquire information about
4 AT&T and Lucent's plans?

5 A I received documents from counsel.

6 Q Okay. What did you ask for to -- that
7 resulted in getting these documents?

8 A Information that would -- that would
9 provide me some -- some insight into what happened
10 with those companies and their negotiations or --
11 or results from court proceedings that -- that
12 might shed a different light than what Mr. Macey
13 was saying.

14 Q You don't identify anything Mr. Macey
15 says about AT&T or Lucent that is factually
16 incorrect; right?

17 A I don't think so, but I think he left
18 some things out.

19 Q I understand that, but I want to be
20 clear that you're not identifying anything that he
21 said that was factually incorrect.

22 A (Witness reviews document.) I -- I

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1 don't think so.

2 Q Now, AT&T is a cap situation; correct?

3 A Yeah, as I -- as I understand it, there
4 were caps in place for many years.

5 Q And the caps impose, once the cap is
6 reached, 100 percent of the increased cost on
7 participants; correct?

8 A That's my understanding.

9 Q That's more severe than what the
10 proposed plan does, isn't it?

11 A It is, but those caps were agreed upon
12 by the parties. And, as I understand it, once
13 there were issues with reaching the cap, some
14 additional money, significant money was put into a
15 VEBA to help offset that.

16 Q My question was a little different, and
17 it's really whether or not a plan that imposes
18 100 percent of the costs, by its terms, on
19 participants is less severe than a plan that
20 imposes only 60 percent of the increased costs?

21 MS. BRAULT: Only 60 percent of the
22 increased costs?

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1 THE WITNESS: Well, again, you can't
2 just look at that piece as if that's the only
3 thing that happened. I mean, I don't see how you
4 can ignore the VEBA money which helps take it from
5 100 percent to something different.

6 BY MR. ROGACZEWSKI:

7 Q VEBA is not a health benefit, though,
8 is it?

9 A No, but it was put there precisely
10 because it was becoming hard for these folks to --
11 to afford the amount over the cap. I mean,
12 that's -- that's my understanding. So it seems
13 like they should be taken together. They're
14 not -- they're not completely disconnected events,
15 in my opinion.

16 Q Let's talk about Goodyear. How did you
17 acquire information about the Goodyear plans?

18 A Again, I -- I asked counsel for
19 documents they had that would -- that would relate
20 to what happened with their retiree health care.

21 Q When you got the documents about AT&T
22 and Lucent, did you after reviewing them ask for

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1 additional information about AT&T and Lucent?

2 A I honestly don't recall whether it came
3 in pieces.

4 Q What about with -- so what you know
5 about AT&T and Lucent comes entirely from
6 information provided by plaintiffs' counsel?

7 A Yes.

8 Q You didn't conduct any independent
9 research?

10 A The information I got seemed pretty
11 clear about what happened.

12 Q You didn't ask any questions about it?

13 A I don't recall.

14 Q Okay. And with Goodyear, the
15 information that you know about Goodyear also
16 comes just from plaintiffs' counsel?

17 MS. BRAULT: Could I just place just
18 the objection and as a clarification that when you
19 talk about, quote, the information that came from
20 plaintiffs' counsel, end quote, you're talking
21 about documents that came from plaintiffs' counsel
22 which have been produced?

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1 BY MR. ROGACZEWSKI:

2 Q I'll take the answer.

3 A Yes, it was the documents from
4 plaintiffs' counsel.

5 Q And did you ask any questions after
6 receiving those documents?

7 A I mean, I had conversations with
8 counsel.

9 Q I'm not -- I'm not --

10 A Okay.

11 Q -- I'm not trying to ask about those
12 conversations. I'm just merely trying to
13 understand the degree to which you accepted the
14 information without question.

15 A Well, I accepted the documents were --
16 were correct. I mean, there may have been
17 conversations we had where I was attempting to get
18 clarification to the extent that, you know,
19 counsel was able to provide. I don't remember
20 specific questions.

21 Q And as with AT&T and Lucent, you're not
22 saying Mr. Macey is factually wrong about what

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1 happened with Goodyear; correct?

2 A I -- I don't believe that I saw
3 anything factually wrong.

4 Q And you didn't conduct any independent
5 research about Goodyear; correct?

6 A I -- I think the documents seemed to --
7 to provide me what I need.

8 Q Okay. Goodyear is another cap
9 situation; correct?

10 A Yes.

11 Q And in the absence in -- in the absence
12 of a funding vehicle, the caps would have resulted
13 in significant premiums; correct?

14 A Yes.

15 Q And in both Goodyear and AT&T and
16 Lucent, the timing is such that the caps were
17 agreed to and then subsequently the VEBA was
18 agreed to; correct?

19 A That's my understanding.

20 Q So the caps were agreed to without a
21 funding vehicle in place; correct?

22 A It's my understanding that -- yes, but

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1 then when there were issues with exceeding the
2 caps, then -- then that led to a funding vehicle
3 to -- to fix the situation.

4 Q Right. You don't disagree that the
5 caps were agreed to in the absence of a funding
6 vehicle?

7 A No, I don't disagree.

8 Q Okay. Let's talk about U.S. Steel.
9 How did you acquire information about the U.S.
10 Steel agreements?

11 A It was -- it's the same answer as the
12 others. I -- I received documents from
13 plaintiffs' counsel.

14 Q Okay. Did you ask for additional
15 information after receiving the documents?

16 A I don't recall that I did.

17 Q Did you conduct any independent
18 research about U.S. Steel?

19 A (Witness reviews document.) I do not
20 believe I did.

21 Q You don't identify anything that
22 Mr. Macey says that is wrong about the U.S. Steel

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1 situation -- that is factually incorrect; correct?

2 MS. BRAULT: The record should reflect
3 that we're not looking at Mr. Macey's report.

4 THE WITNESS: Yeah, I -- I don't --

5 MR. ROGACZEWSKI: No, we're looking at
6 Mr. Lynne's rebuttal report.

7 THE WITNESS: No, I don't think there
8 was any -- anything factually incorrect that I
9 found, but, again, it's the same issue of leaving
10 the sort of selective analysis.

11 BY MR. ROGACZEWSKI:

12 Q At the bottom of page 4, there's a
13 quote from the 1975 agreement about pensioners and
14 receiving a -- an individual receiving a surviving
15 spouse's benefits.

16 Do you see that?

17 A Yes.

18 Q How did you come across that language?

19 A It was in a document provided by
20 counsel.

21 Q Now, that provision standing alone has
22 nothing to do with health care benefits; correct?

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1 A Well, it talks about how changes can be
2 made to health care benefits.

3 Q And you understand that there is no
4 similar provision in the CNH provision; correct?

5 A Well, I think that's sort of the point.

6 Q And you understand that the Sixth
7 Circuit has held that changes can be made
8 unilaterally by the company; correct?

9 MS. BRAULT: Well, let me place an
10 objection to that's overly broad and ambiguous.

11 THE WITNESS: Not just willy-nilly,
12 they can't.

13 BY MR. ROGACZEWSKI:

14 Q What do you mean?

15 A Well, they can't make any change they
16 want.

17 Q Right. As long as it satisfies the
18 Reese standard; correct?

19 A Right.

20 Q So the fact that an agreement had a
21 limitation that CNH's doesn't have isn't really
22 relevant, is it?

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1 Do you agree with that?

2 A Yes.

3 Q And CNH's proposed plan starts at 57
4 for pre-Medicare and 5 for Medicare; correct?

5 A Sounds correct.

6 Q Both of those are less than what's in
7 the U.S. Steel plan; correct?

8 A Yes.

9 Q And let's look at a couple of pages
10 earlier, on page 8, at the plan design. The
11 in-network co-insurance rate is also higher under
12 the CNH proposed plan, isn't it?

13 A Eighty-five.

14 Q And the out-of-pocket maximum of the
15 proposed plan provides a greater degree of
16 protection for participants than the U.S. Steel
17 plan; correct?

18 A I believe it has a lower out-of-pocket,
19 yes.

20 Q Let's talk about Ford. And I -- let me
21 go back and ask this before. Have you conducted
22 any independent research about U.S. Steel?

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1 A No.

2 Q How did you acquire the information
3 that's in the rebuttal report about Ford?

4 A They were reports that I received from
5 counsel.

6 Q Did you --

7 A Or documents I received.

8 Q Did you do any independent research
9 about Ford?

10 A No.

11 Q Did you react or -- after reviewing the
12 documents provided by plaintiffs' counsel, did you
13 ask for additional information?

14 A I may have gotten Francis' report after
15 reviewing the initial information.

16 Q Did you ask for Francis' report?
17 You're talking about Theo Francis; correct?

18 A Yes.

19 Q Did you ask for Mr. Francis' report?

20 A Yes.

21 Q Specifically?

22 A Well, about the financial condition of

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1 one versus the other.

2 Q When did you become aware that

3 Mr. Francis was one of plaintiffs' experts?

4 A I don't recall.

5 Q And did you know Mr. Francis was an
6 expert when you asked for his report?

7 A Well, I didn't know Mr. Francis.

8 Q So you asked --

9 A I was --

10 Q I'm trying --

11 A I was asking for information about --

12 because Mr. Macey was trying to compare the
13 automobile companies, which basically were
14 bankrupt. They were on it as comparisons. So I
15 wanted to understand what I could about CNH's
16 financial position.

17 Q Now -- and what you got in response to
18 that was Mr. Francis' report?

19 A Yes.

20 Q Now, again, you're not identifying
21 anything factually incorrect in Mr. Macey's report
22 about Ford; right?

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1 A No, just leaving out.

2 Q In fact, both Ford and GM agreed with
3 UAW to reduce retiree health benefits; right?

4 A It's my understanding they did. I'm
5 not sure what choice they had.

6 Q They -- but they -- they agreed to
7 them; correct?

8 A In a bankruptcy situation.

9 Q It's your understanding that they -- as
10 part of the bankruptcy, that's when the reductions
11 occurred?

12 A I'm sure there were many instances of
13 negotiations as -- as these companies were having
14 trouble.

15 Q GM's bankruptcy was in 2009; correct?

16 A I don't see that I have the date in
17 here.

18 Q Okay. Do you know when GM's bankruptcy
19 occurred?

20 A I don't know the exact date.

21 (Lynne Deposition Exhibit 19 was marked
22 for identification and attached to the

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1 transcript.)

2 BY MR. ROGACZEWSKI:

3 Q All right. You have in front of you,
4 Mr. Lynne, a filing made in a court case called,
5 In re: General Motors Corp., pending in the United
6 States Bankruptcy Court for the Southern District
7 of New York, Case Number 09-50026.

8 I'll represent this was also produced
9 by you.

10 Do you recall reviewing this document?

11 A (Witness reviews document.) I don't
12 recall -- recall receiving this; I don't recall
13 that I relied on it.

14 Q Okay. Do you recall reviewing it?

15 A If I did, it was fairly cursory.

16 Q I can't imagine why. It's mind
17 numbing, having read it.

18 Does it refresh your recollection
19 regarding when the GM bankruptcy occurred?

20 A Looks like '09, yes.

21 Q And do you have an understanding as to
22 when GM and Ford first agreed to reductions in

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1 THE WITNESS: You know, when I work
2 with my clients, the things that they need to do
3 are certainly dictated at some point by financial
4 conditions.

5 BY MR. ROGACZEWSKI:

6 Q That wasn't an answer to my question.
7 How -- I'll ask it -- I'll ask it in a nonleading
8 way.

9 How is the financial condition of CNH
10 relevant to whether the changes that one wants to
11 make are reasonable in light of changes in health
12 care?

13 A I wasn't trying to make that
14 comparison.

15 Q Okay.

16 A Macey was when comparing CNH to these
17 other companies.

18 Q That's what you under- --

19 A I was simply trying to rebut that part
20 of his argument.

21 Q And that's what you understood
22 Mr. Macey to be doing in that part of his report?

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1 A Trying to say that what happened at
2 these auto companies is something that could --
3 could happen at CNH, and that it was a good
4 comparison, which I disagree with.

5 Q How about GM? How did you acquire the
6 information in your rebuttal report regarding GM?

7 A (Witness reviews document.) That was a
8 combination of documents received from counsel,
9 and I believe that was where I looked -- looked up
10 the composition of the VEBA on the UAW Web site.

11 Q The UAW VEBA trust breakdown -- work
12 chart; right?

13 A Right.

14 Q And aside from that, did you do any
15 independent research into the GM situation?

16 A No.

17 Q And aside from the conflation of the
18 UAW VEBA trust with the UAW, did you identify
19 anything incorrect in Mr. Macey's report?

20 A Mr. Macey wasn't -- I don't believe he
21 was clear as to which of the auto companies he was
22 referring to, but he did say that -- he was

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1 attempting to say that the UAW made changes to
2 benefits; and, in fact, it was -- the trustees or
3 the administrators of the VEBA, which is
4 different.

5 Q I said aside from that.

6 A Oh, I'm sorry.

7 Q Aside from that.

8 A No.

9 Q But Mr. Macey isn't wrong about the
10 terms that the UAW retirees are -- that -- that --
11 the terms of their benefits under the UAW VEBA as
12 set by the UAW VEBA trust; correct?

13 A No, no.

14 Q And, so, with the exception of the
15 research, you did everything that's in your --
16 everything you understand about GM came from
17 plaintiffs' counsel; correct?

18 MS. BRAULT: You mean in documents from
19 plaintiffs' counsel?

20 THE WITNESS: Yes.

21 BY MR. ROGACZEWSKI:

22 Q And the same thing I'm saying would be

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1 true for Ford; correct?

2 A Yes.

3 Q Now, you make a -- a big point about
4 the connection of the Ford and the GM changes to
5 bankruptcy; correct?

6 A I think it makes the comparison. Not a
7 very good one, yeah.

8 Q GM's changes were made four years
9 before it went into bankruptcy; correct?

10 A It was all part of their -- I viewed it
11 as a -- as all a part of the agreements that were
12 made as the company was going down hill.

13 Q So you look at -- you take together the
14 '05 agreement, the '07 agreement and the
15 bankruptcy and put them all together?

16 A Yes.

17 Q You understand, correct, that the VEBA
18 that GM agreed to was not part of the original
19 agreement; right? That -- that came second in
20 time?

21 MS. BRAULT: I'm going to place an
22 objection: form.

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1 ACKNOWLEDGMENT OF DEPONENT

2 I, Mark L. Lynne, do hereby acknowledge
3 that I have read and examined the foregoing
4 testimony, and the same is a true, correct and
5 complete transcription of the testimony given by
6 me and any corrections appear on the attached
7 Errata sheet signed by me.

8

9

10

11

12

(DATE)

(SIGNATURE)

13

14

15

CERTIFICATE OF NOTARY PUBLIC

16

Sworn and subscribed to before me this

17

_____ day of _____, _____

18

19

20

21

NOTARY PUBLIC

MY COMMISSION EXPIRES

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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Dana C. Ryan, Registered Professional
3 Reporter, Certified Realtime Reporter, the officer
4 before whom the foregoing proceedings were taken
5 do hereby certify that the foregoing transcript is
6 a true and correct record to the best of my
7 ability of the proceedings; that said proceedings
8 were taken by me stenographically and thereafter
9 reduced to typewriting under my supervision; and
10 that I am neither counsel for, related to, nor
11 employed by any of the parties to this case and
12 have no interest, financial or otherwise, in its
13 outcome.

14 IN WITNESS WHEREOF, I have hereunto set
15 my hand and affixed my notarial seal this 24th day
16 of January 2014.

17 My Commission expires:

18 May 17, 2017

19 
20

21 NOTARY PUBLIC IN AND FOR THE
22 STATE OF MARYLAND